



THE INDIAN PARTNERSHIP ACT, 1932

CHAPTER – 3

INTRODUCTION

You might be aware that one of the forms in which business can be carried on is partnership, where two or more persons join together to form the partnership and run the business. In order to govern and guide partnership, the Indian Partnership Act, 1932, was enacted. In human relations often misunderstandings crop up; if any misunderstanding crops up in a partnership amongst its partners, the continuity of the partnership may become doubtful. Since, public at large would be dealing with the partnership as customers, suppliers, creditors, lenders, employees or any other capacity, it is also very important for them to know the legal consequences of their transactions and other actions in relation with the partnership where no one partner is the owner of the business and, therefore, exclusively responsible.

The law relating to partnership in India which is contained in Indian Partnership Act (IX of 1932) is concerned partly with the rights and duties of partners between themselves and partly with the legal relations between partners and third persons, which flow or are incidental to the formation of a partnership. (Thus the act not only determines the rights and duties of a partner in relation to the partnership business as also against other partners; it clearly establishes the position of a partner as well as partnership firm vis-a-vis third parties, in legal and contractual relationships arising out of and in the course of business of the firm). It may be described as a branch of law relating to principal and agent since every partner is in contemplation of law the general and accredited agent of the partnership.

In this Chapter, we shall deal with the provisions of the Act in the following order :

Unit 1 - General Nature of a Partnership

Unit 2 - Relations of Partners

Unit 3 - Registration and Dissolution of a Firm





THE INDIAN PARTNERSHIP ACT, 1932



Unit 1

General Nature of a Partnership

Learning Objectives

- ◆ Understand the concept of partnerships and be clear about its essentials.
- ◆ Try to understand the 'principal - agent relationship' among the partners.
- ◆ Note the points of difference between partnership and other various forms of organisation.
- ◆ Be aware of the position of a minor in a partnership.

3.1 WHAT IS PARTNERSHIP?

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all (Section 4). It, therefore, follows that a partnership consists of three essential elements :

- (i) It must be a result of an agreement between two or more persons.
- (ii) The agreement must be to share the profits of the business.
- (iii) The business must be carried on by all or any of them acting for all.

All these essentials must coexist before a partnership can come into existence.

3.2 ESSENTIAL ELEMENTS OF PARTNERSHIP

We shall now consider the aforesaid essential elements one by one.

Agreement : You have just observed that partnership must be the result of an agreement between two or more persons. You should note that it can arise only from a contract and not from status. That is why, a partnership is distinguishable from a Hindu Undivided Family carrying on a family business. The reason is that as a result of the peculiarities of the Mitakshara School of Hindu Law applicable to joint families, a male child of a Hindu acquires an interest in a family business even in the absence of an agreement in that behalf, whereas partnership is a creation only of mutual agreement. Thus the nature of the partnership is voluntary and contractual.

An agreement from which relationship of partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

Sharing profits of business : In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. The motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore there can be no partnership where there is no intention to carry on the business and to share the profits thereof. For example, co-owners who share amongst themselves the rent derived from a piece of land are not partners, because there does not exist any business. Similarly, no charitable institution or club may be floated in partnership [a joint stock company may, however, be floated for non-economic purposes]. Secondly, there must be an agreement to share profits. For example X and Y buy certain bales of cotton which they agree to sell on their joint account and to share the profits



equally. In these circumstances, X and Y are partners in respect of such cotton. But an agreement to share losses is not an essential element. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

Business carried on by all or any of them acting for all : The third requirement is that the business must be carried on by all the partners or by anyone or more of the partners acting for all. *This is the cardinal principle of the partnership law.* An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. You should, therefore, note that the true test of partnership is *mutual agency* rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership. Sharing of profits is only *prima facie* evidence which can be rebutted by a stronger evidence. Thus, this *prima facie* evidence can be rebutted by proving that there is no mutual agency.

3.3 TRUE TEST OF PARTNERSHIP

You must have understood that sharing of profit is an essential element to constitute a partnership. But, it is only a *prima facie* evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

Where there is an express agreement between partners to share the profits of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4, in determining the existence or otherwise of a partnership.

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred. According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and it is clear but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while determining the relationship between the parties and ascertaining the existence of partnership.

The receipt by a person of a share of the profits of a business or a payment contingent upon the earning of profits or varying with the profits earned by business, would not by itself make him a partner with the persons carrying on the business, particularly, when such share of payment is received by the following persons :

- (i) a lender of money to persons engaged or about to be engaged in any business, or
- (ii) a servant (e.g., manager of a firm) or agent as his remuneration, or
- (iii) widow or child of a deceased partner or
- (iv) a previous owner of part of the business as the consideration for the sale of the goodwill or share thereof.

Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Distinction between partnership and firm : Persons who have entered into partnership with one another are called individually “partners” and collectively the name under which the business is carried on is called the “firm name”. Partnership is merely an abstract legal relation between the partners. A firm is a concrete thing signifying the collective entity for all the partners. Partnership is thus that invisibility which binds the partners together and firm is the visible form of those partners who are thus bound together.

3.4 PARTNERSHIP DISTINGUISHED FROM OTHER FORMS OF ORGANISATION

3.4.1 PARTNERSHIP VS. JOINT STOCK COMPANY

- (1) *Personality* : A firm is not a legal entity i.e., it has no legal personality distinct from the personalities of its constituent members. On the other hand, a registered company is a judicial person distinct from its members.
- (2) *Agency* : In a firm, every partner is an agent of the other partners, as well as of the firm, but in the case of a company a member is not an agent of the other members or of the company, therefore his actions do not bind either other members or the Company.
- (3) *Distribution of profits* : The profits of the firm must be distributed among the partners according to the terms of the partnership deed. But in the case of a company, there is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, becomes distributable among the shareholders only when dividends are declared.
- (4) *Extent of liability* : In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly. On the other hand, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, in the case of a company limited by shares; but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited.
- (5) *Property* : The firm’s property is that which is the “joint estate” of all the partners as distinguished from the ‘separate’ estate of any of them and it does not belong to a body distinct in law from its members. That is why, in the event of insolvency, the joint estate, after meeting the liability in respect of joint debts devolves on the partners. But in the case of a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.



- (6) *Transfer of shares* : A share in a partnership cannot be transferred without the consent of all the partners; but in a company, a shareholder may transfer his shares, subject to the provisions contained in its Articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
- (7) *Management* : In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management. But members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending the general meeting and voting thereat to decide certain questions such as election of directors, appointment of auditors, etc.
- (8) *Number of membership* : In the case of firms carrying on business other than banking, the number must not exceed 20 and in the case of banks such number must not exceed 10. A private company may have as many as 50 members but not less than two and a public company may have any number of members but not less than seven.

3.4.2 PARTNERSHIP VS. CLUB

A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc. On the other hand, partnership is also an association of persons but formed with the object of earning profit.

- (1) Unlike a partner, a member of a club is not the agent of other members nor is he liable to a creditor of the club, except when he is responsible for the contract which gave rise to the liability.
- (2) A member of a club has no interest in the property of the club, as a partner has in the property of the firm. Also, the change in the membership of a club does not affect its existence.

3.4.3 PARTNERSHIP VS. HINDU UNDIVIDED FAMILY

- (1) *Creation* : The relation of partnership is created necessarily by an agreement, whereas the right in the joint family is created by status. The creation of a right by status means its creation by birth in the family.
- (2) *Death* : Death of a partner ordinarily leads to the dissolution of partnership. But the death of a member of the Hindu undivided family does not give rise to dissolution of the family business.
- (3) *Management* : The right of management of joint family business generally vests in the Karta, the governing male member of the family. But in the case of a partnership, all the partners are equally entitled to take part in the partnership business.
- (4) *Authority to bind the firm* : In the joint family, the Karta or the manager, has the authority to contract for the family business. In partnership, every partner can, by his act, bind the firm.
- (5) *Liability* : In a partnership, the liability of a partner is unlimited; but in a Hindu undivided family, only the liability of the Karta is unlimited, and the other copartners are liable only

to the extent of their share in the profits of the family business, unless they take part in the act performed or transactions entered into by the Karta.

- (6) *Calling for accounts* : On the separation of the joint family, a member is not entitled to ask for account of the family business. But a partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.
- (7) *Governing Law* : A partnership is governed by the Partnership Act; a Joint Hindu family business is governed by the Hindu Law.
- (8) *Minor's capacity* : In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners. In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
- (9) *Continuity* : A Joint Hindu Family has the continuity till it is divided. The status of Joint Hindu Family is not thereby affected by the death of a member, but a firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.

3.4.4 PARTNERSHIP VS. CO-OWNERSHIP

- (1) Partnership always arises out of a contract, express or implied and co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
- (2) In partnership, there is community of interest. It means that profits and losses must have to be shared but co-ownership does not necessarily involve sharing of profits and losses.
- (3) In the case of partnership, a partner is the agent of the other partners, but in the case of a co-ownership, a co-owner is not the agent of other co-owners.
- (4) A share in the partnership is transferred only by the consent of other partners. Co-ownership may be dissolved at the will of co-owners; also a co-owner may transfer his interest or rights in the property without the consent of other co-owners.

3.4.5 PARTNERSHIP VS. ASSOCIATION

- (1) Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business; but partnerships does not exist between members of a charitable society or religious association or an improvement scheme or building corporation, etc.
- (2) Partnership does not exist between members of a mutual insurance society.
- (3) In a trade combine or protection association, the relation between the members is not that of partnership.

3.5 TYPES OF PARTNERS

Active Partner means a person (i) who has become a partner by agreement and (ii) who actively participates in the conduct of the partnership, while a partner who does not take an active part in the conduct of the business of the firm is called a sleeping(dormant) partner. A person who lends his name to the firm, without having any real interest in it is called a nominal partner.

'Partner' by holding out' (Section 28) : Partnership by 'holding out' is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then



stopped from denying the character he has assumed and upon the faith of, which creditors may be presumed to have acted. When a person (i) represents himself, or (ii) knowingly permits himself, to be represented as a partner in a firm (when in fact he is not) he is liable, like a partner in the firm to anyone, who on the faith of such representation, has given credit to the firm.

A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

Example: X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Considering the provisions of the Indian Partnership Act, 1932 state whether A is liable.

Yes, A is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

It is only the person to whom the representation has been made and who has acted thereon that has the right to enforce liability arising out of 'holding out'.

You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.

The rule enunciated in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

Sub-partnership : A sub-partnership may arise when, consequent upon an agreement between a partner in a firm and a stranger, the latter is vested with interest jointly with that partner so far as his share in the firm is concerned.

Such an agreement will not render the stranger a partner of the main firm. A sub-partner can claim the agreed share from the actual partner, but he can have no right against the main firm to take part in or to interfere with its business or to examine its account.

3.6 MINOR'S POSITION IN PARTNERSHIP

We shall now discuss a topic, viz., minor's position in relation to partnership. You will recall that a minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows :

- (1) **Rights :** (i) A minor partner has a right to his agreed share of the profits of the firm. (ii) He can have access to, inspect and copy the accounts of the firm. (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise. (iv) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.
- (2) **Liabilities :** (i) The minor's share is liable for the acts of the firm, but he is not personally liable for any such act. (ii) Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months. If the minor becomes a partner of his own willingness or by his failure to give the public notice within specified time, the position will be as follows :
- (i) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (ii) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

Where the minor decides to sever his connection with the firm his rights and liabilities will be as follows.

- (i) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
- (ii) His share shall not be liable for any acts of the firm done after the date of the notice.
- (iii) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

3.7 SUMMARY

It is not quite easy to define the term 'Partnership'. The definition given by Section 4 of the Act brings out very clearly the fundamental principle that each partner, when carrying on the business of the firm, is an agent as well as principal, and is probably the most business like definition of the term. The definition contains three elements which must be present before a group of persons can be held to be partners, namely; (a) agreement among all the partners; (b) agreement to share the profits of the business; (c) the business must be carried on by all or any of them, acting for all. These three elements may appear to overlap, but they are nevertheless distinct.

The element of agreement in partnership distinguishes it from various other relations which arise by operation of law and not from agreement, such as, joint-owners, Hindu Undivided Family, etc.

CHAPTER –

THE INDIAN PARTNERSHIP ACT, 1932



Unit 2

Relations of Partners

Learning Objectives

- ◆ Be familiar with the legal provisions regulating relation of partners' interest as well as relations with the third parties.
- ◆ Note the scope of implied authority of a partner to bind the partnership by his acts.
- ◆ Be aware of the various situations in which the constitution of a firm may change and its effect on the rights and duties of the partners.
- ◆ Learn how the share in a partnership is transferred and what shall be the rights and obligations of such transferee.

3.8 MUTUAL RIGHTS AND DUTIES OF PARTNERS

These are governed by the contract existing between them which may be express or implied by the course of dealings. The contract may be varied by the consent of all the partners; which may be express or implied by the course of dealings.

The contract may provide that a partner shall not carry on any business other than that of the firm while he is a partner (Section 11). Subject to a contract between the partners the mutual rights and liabilities are as follows :

Rights : (1) Right to take part in the conduct of the Business : Every partner has the right to take part in the business of the firm. This is because partnership business is a business of the partners and their management powers are generally coextensive. Now suppose this management power of the particular partner is interfered with and he has been wrongfully precluded from participating therein, can the Court interfere in these circumstances? The answer is in the affirmative. The Court can, and will, by injunction, restrain other partners from doing so. You should also note in this connection that a partner who has been wrongfully deprived of the right of participation in the management has also other remedies, e.g., a suit for dissolution, a suit for accounts without seeking dissolution, etc.

The above mentioned provisions of law will be applicable only if there is no contract to the contrary between the partners. It is quite common to find a term in partnership agreements, which gives only limited power of management to a partner or a term that the management of the partnership will remain with one or more of the partners to the exclusion of others. In such a case, the Court will normally be unwilling to interpose with the management with such partner or partners, unless it is clearly made out that something was done illegally or in breach of the trust reposed in such partners.

(2) Right to be consulted : Where any difference arises between the partners with regard to the business of the firm, it shall be determined by the views of the majority of them, and every partner shall have the right to express his opinion before the matter is decided. But no change in the nature of the business of the firm can be made without the consent of all the partners [Section 12 (c)]. This means that in routine matters, the opinion of the majority of the partners will prevail. Of course, the majority must act in good faith and every partner must be consulted as far as practicable.

You should note that the aforesaid majority rule will not apply where there is a change in the nature of the firm itself. In such a case, the unanimous consent of the partners is needed.



(3) Right of access to books : Every partner whether active or sleeping is entitled to have access to any of the books of the firm and to inspect and take out copies thereof [Section 12 (d)]. The right must, however, be exercised *bona fide*.

(4) Right to remuneration : No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm he can claim it even in the absence of a contract for the payment of the same.

It is not uncommon for partners, in actual practice, to agree that a managing partner will receive over and above his share, salary or commission for the trouble that he will take while conducting the business of the firm.

(5) Right to share Profits : Partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm [Section 13 (b)]. The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners. If there is no agreement then you should make a presumption of equality and the burden of proving that the shares are unequal, will lie on the party alleging the same.

There is no connection between the proportion in which the partners shall share the profits and the proportion in which they have contributed towards the capital of the firm.

(6) Interest on Capital : Suppose interest on capital subscribed by the partner is payable to him under the partnership deed, then in such a case, the interest will be payable only out of profits. As a general rule, interest on capital subscribed by partners is not allowed unless there is an agreement or usage to that effect. The principle underlying this provision of law is that regards the capital brought by a partner in the business, he is not a creditor of the firm but an adventurer.

The following elements must be present before a partner can be entitled to interest on moneys brought by him in the partnership business: (i) an express agreement to that effect, or practice of the particular partnership or (ii) any trade custom to that effect; or (iii) a statutory provision which entitles him to such interest.

(7) Interest on advances : Suppose a partner makes an advance to the firm in addition to the amount of capital to be contributed by him, then in such a case, the partner is entitled to claim interest thereon @6% per annum [Section 13 (d)]. While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.

From the discussion so far, you will notice that the Partnership Act makes a distinction between the capital contribution of a partner and the advance made by him to the firm. The advances are regarded as loans which should bear interest while capital bears interest only when there is an agreement to this effect.

(8) Right to be indemnified : Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct

of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstance [Section 13 (e)].

(9) Right to stop admission of a new partner : Every partner has the right to prevent the introduction of a new partner in the firm without the consent of all the existing partners. Where a partner is introduced into the firm, he is not liable for any act of the firm done before he became a partner (Section 31).

(10) Right to retire : Every partner has the right to retire with the consent of all the other partners and in the case of a partnership being at will, by giving notice to that effect to all the other partners [Section 32 (1)].

(11) Right not to be expelled : Every partner has the right not to be expelled from the firm by any majority of the partners (Section 33).

(12) Right of outgoing partner to carry on competing business : An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but without using the firm name or representing himself as carrying on the business of the firm or soliciting the custom of persons who were dealing with the firm before he ceased to be a partner [Section 36 (1)].

(13) Right of outgoing partner to share subsequent profits : Where any partner has died or ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, the outgoing partner or his estate has at his or his representative's option, the right to such share of the profit made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest @ 6% per annum on the amount of his share in the property of the firm [Section 37].

(14) Right to dissolve the firm : A partner has the right to dissolve the partnership with the consent of all partners (Section 40). But where the partnership is at will the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm (Section 40).

DUTIES

- (1) Partners are bound to carry on the business of the firm (i) to the greatest common advantage, (ii) to be just and faithful to each other and (iii) to render to any partner or his legal representative a true account and full information of all things affecting the firm (Section 9).
- (2) Every partner is liable to indemnify the firm for any damage caused to it by reason of his fraud in the conduct of the business of the firm (Section 10).
- (3) Every partner is bound to attend diligently to his duties relating to the conduct of the firm's business [Section 12 (b)]. A partner is not, however, normally entitled to remuneration for participating in the conduct of the business [Section 13 (a)]. He is also bound to let his partners have the advantage of his knowledge and skill.
- (4) All the partners are liable to contribute equally to the loss sustained by the firm.



- (5) A partner must indemnify the firm for any loss caused to it by willful neglect in the conduct of the business of the firm [Section 13 (f)].
- (6) If a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm's name then he is bound to account for that profit and refund it to the firm [Section 16 (a)].
- (7) If a partner carries on business of the same nature as and competing with that of the firm, then he must account for and pay to firm all profits made by him in the business [Section 16 (b)]. The firm will not be liable for any loss.

We shall discuss Sections 16 and 17 in more detail later on.

3.9 PARTNERSHIP PROPERTY (SECTION 14)

The expression 'property of the firm', also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or 'joint estate', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled. The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items :

- (i) all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- (ii) all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and
- (iii) goodwill of the business.

The determination of the question whether a particular property is or is not 'property' of the firm ultimately depends on the real intention or agreement of the partners. Thus, the mere fact that the property of a partner is being used for the purposes of the firm shall not by itself make it partnership property, unless it is intended to be treated as such. Partners may, by an agreement at any time, convert the property of any partner or partners (and such conversion, if made in good faith, would be effectual between the partners and against the creditors of the firm) into a partnership property.

Goodwill : Section 14 specifically lays down that the goodwill of a business is subject to a contract between the partners, to be regarded as 'property' of the 'firm'. But this Section does not define the term. 'Goodwill' is a concept very easy to understand but difficult to define. Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

When a partnership firm is dissolved every partner has a right, in the absence of any agreement to the contrary, to have the goodwill of business sold for the benefit of all the partners.

A goodwill is a part of the property of the firm, it can be sold separately or along with the other properties of the firm. Any partner may upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits and notwithstanding any

thing contained in Section 27 of the Indian Contract Act, 1872 such agreement shall be valid if the restrictions imposed are reasonable.

3.10 PERSONAL PROFIT EARNED BY PARTNERS (SECTION 16)

Where a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm name, he must account for that profit and pay it to the firm. For example, A, B, C & D established partnership business for refining sugar. A, who was himself a wholesale grocer, was entrusted with the work of selection and purchase of sugar. As wholesale grocer, A was well aware of the variations in the sugar market and had the suitable sense of propriety as regards purchases of sugar. He had already in stock sugar purchased at a low price which he sold to the firm when it was in need of some, without informing the partners that the sugar sold had belonged to him. It was held that A was bound to account to the firm for the profit so made by him. This rule, is however, subject to a contract between partners.

Where a partner carries on a competing business, he must account for and pay to the firm all profits made by him in the business. For example, A, B, C and D started a business in partnership for importing salt from foreign ports and selling it at Chittagong. A struck certain transactions in salt on his own account, which were found to be of the same nature as the business carried on by the partnership. It was held that A was liable to account to the firm for profits of the business so made by him. This rule is also subject to a contract between the partners. He is under no obligation whatever to account for the profits of a non competing business, even though his connection with the firm may enable him to push his private trade better.

You should, however, note that a deed of partnership may contain a clause that some or all the partners are not to carry any business other than that of the firm during the continuance of partnership [Section 11(2)]. A breach of such a provision may entitle the other partner to recover damages from the defaulting partner, but it will not give rise to any occasion for accounting to his copartners for the profits earned unless the business is shown to be in rivalry with the business of the firm.

3.11 RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE CONSTITUTION OF THE FIRM (SECTION 17)

Before going into rights and duties, we should first know how a change may take place in the constitution of the firm. It may occur in one of the four ways, namely, (i) where a new partner or partners come in, (ii) where some partner or partners go out, i.e., by death or retirement, (iii) where the partnership concerned carries on business other than the business for which it was originally formed, (iv) where the partnership business is carried on after the expiry of the term fixed for the purpose.

Section 17 lays down the rule :

- (a) Where a change occurs in the constitution of the firm in any of the first three ways mentioned above, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were before the change as may be.



- (b) where a firm constituted for a fixed term continues to carry on the business after the expiry of the term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will. Some provisions have been held to be inconsistent with the incidents of partnership at will, e.g., the provision in the deed that a partner desiring to retire shall give notice of his intention of the same at a certain time before hand.
- (c) Where the firm constituted to carry out one or more ventures or undertakings, carries out other ventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures of the undertaking are the same as of those in respect of the original adventures.

You should note that the above-mentioned rules are subject to contract between the partners.

3.12 RELATION OF PARTNERS TO THIRD PARTIES (SECTIONS 18 TO 30)

Partners as agents of the firm : You may recall that a partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any one of the partners can be the agent of the others. Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal ; and so far as he acts for his partners, he may properly be deemed an agent. The principal distinction between him, and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

The rule that a partner is the agent of the firm for the purpose of the business of the firm, cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

3.13 IMPLIED AUTHORITY OF A PARTNER OF THE FIRM

At the very outset, you should understand what is meant by “implied authority”. You have just read that every partner is an agent of the firm for the purpose of the business thereof. Consequently, as between the partners and the outside world (whatever may be their private arrangements between themselves), each partner is agent of every other in every matter connected with the partnership business; his acts bind the firm.

Sections 19 (1) and 22 deal with the implied authority of a partner. The impact of these Sections is that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm, provided that the act is done in the firm name, or in any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority.

You should specially note the phrase “in the usual way”. It has been included to indicate that if a usual act is done in an unusual way the outsider may well be put on an enquiry into unusual circumstances under which he is being called upon to give credit. It is not unreasonable to expect him to ask whether the partner has authority to act as he is doing. If the outsider chooses to neglect what is unusual, he must not seek to charge persons other than the one with whom he is actually dealing. If the act is “outside the usual course of the business of the firm” it will not bind the firm even if it is prudent or has benefited the firm unless it is ratified and approved by all the partners. Power to do the usual does not include power to do the unusual.

Thus, a partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership. You must remember that an implied authority of a partner may differ in different kinds of business. For example, it may be usual for one partner of a firm of bankers to draw, accept or endorse a bill of exchange on behalf of the firm, but the same may be unusual, for one of a firm of solicitors to do so, for it is no part of the ordinary business of a solicitor to draw, accept or endorse bills of exchange.

If partnership be of a general commercial nature, he may pledge or sell the partnership property; he may buy goods on account of the partnership; he may borrow money, contract debts and pay debts on account of the partnership; he may draw, make, sign, endorse, transfer, negotiate and procure to be discounted, promissory notes, bills of exchange, cheques and other negotiable papers in the name and on account of the partnership.

3.14 ACTS BEYOND IMPLIED AUTHORITY (SECTION 19)

If there is no usage or custom of trade to the contrary, the implied authority of the partner does not empower him to:

- (a) submit a dispute relating to the business of the firm to arbitration as it is not the ordinary business of partnership firm to enter into a submission for arbitration ;
- (b) open a bank account on behalf of the firm in his own name;
- (c) compromise or relinquish any claim or portion of a claim by the firm against a third party (i.e., an outsider).
- (d) withdraw a suit or proceedings filed on behalf of the firm;
- (e) admit any liability in a suit or proceedings against the firm;
- (f) acquire immovable property on behalf of the firm;
- (g) transfer immovable property belonging to the firm; and
- (h) enter into partnership on behalf of the firm.

3.15 EXTENSION AND RESTRICTION OF PARTNERS’ IMPLIED AUTHORITY (SECTION 20)

The partners may, by contract between them, either extend or restrict the implied authority of any partner. In spite of any such restriction if a partner does, on firm’s behalf, any act which



falls within his implied authority, the firm will be bound unless the person with whom he is dealing is aware of the restriction or does not know or believe the partner to be a partner. Thus a third party is not affected by a secret limitation of a partner's implied authority unless he had actual notice of it. For example, A, a partner, borrows from B Rs. 1,000 in the name of the firm but in excess of his authority, and utilises the same in paying off the debts of the firm. Here, the fact that the firm has contracted debts suggests that it is a trading firm, and as such it is within the implied authority of A to borrow money for the business of the firm. This implied authority, as you have noticed, may be restricted by an agreement between him and other partners. Now if B, the lender, is unaware of this restriction imposed on A, the firm will be liable to repay the money to B. On the contrary B's awareness as to this restriction will absolve the firm of its liability to repay the amount to B.

You should further note that the above-mentioned extension or restriction is only possible with the consent of all the partners. Any one partner, or even a majority of the partners, cannot restrict or extend the implied authority.

3.16 ACTS IN EMERGENCY (SECTION 21)

Over and above the implied authority which every partner wields subject to the provision of Section 20, the Act further recognises that each partner can bind the firm by all of his acts done in an emergency, with a view to protecting the firm from any loss, provided he has acted in the same manner as a man of ordinary prudence would have acted in the like circumstances.

Admission by partner - its effects (Section 23) : Partners, as agents of each other can make binding admissions but only in relation to partnership transaction and in the ordinary course of business; an admission or representation by a partner will not however, bind the firm if his authority on the point is limited and the other party knows of the restriction. The section speaks of admissions and representations being evidenced against the firm. That is to say, they will affect the firm when tendered to third parties; they may not have the same effect in case of disputes between the partners themselves.

3.17 NOTICE TO AN ACTING PARTNER - ITS EFFECT (SECTION 24)

The notice to a partner, who habitually acts in business of the firm, on matters relating to the affairs of the firm, operates as a notice to the firm except in the case of a fraud on the firm committed by or with the connivance of that partner. Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must be received by a working partner and not by a sleeping partner. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

The only exception would lie in the case of fraud, whether active or tacit. For example, A, a partner who actively participates in the management of the business of the firm, bought for his firm, certain goods, while he knew of a particular defect in the goods. His knowledge as regards the defect, *ordinarily*, would be construed as the knowledge of the firm, though the other partners in fact were not aware of the defect. But because A had, in league with his seller, conspired to conceal the defect from the other partners, the rule would be inoperative and the other partners would be entitled to reject the goods, upon detection by them of the defect.

3.18 LIABILITY TO THIRD PARTIES (SECTIONS 25 TO 27)

The question of liability of partners to third parties may be considered under different heads.

These are as follows:

- (i) **Contractual liability** : Every partner is liable jointly with other partners also severally for the acts of the firm done while he is a partner. The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner. Thus, where certain persons were found to have been partners in a firm when the acts constituting an infringement of a trade mark by the firm took place, it was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.
- (ii) **Liability for tort or wrongful act** : The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting (a) in the ordinary course of the business of the firm (b) with the authority of the partners.

If the act in question can be regarded as authorised and as falling within either of the categories mentioned in Section 26, the fact that the method employed by the partner in doing it was unauthorised or wrongful would not affect the question. Furthermore, all the partners in a firm are liable to a third party for loss or injury caused to him by the negligent act of a partner acting in the ordinary course of the business. For example, one of the two partners in coal mine who acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result thereof, an injury was caused to a workman. The other partner was held responsible for the same.

- (iii) **Liability for misappropriation by a partner** : Section 27 provides that (a) when a partner, acting within his apparent authority, receives money or other property from a third person and misapplies it or (b) where a firm, in the course of its business, received money or property from a third person and the same is misapplied by a partner, while it is in the custody of the firm, is liable to make good the loss.

It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners. Clause (a) covers the misapplication of money or property belonging to a third party made by the partner receiving the same. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm. On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners. The firm would be liable in both the cases.

If receipt of money by one partner is not within the scope of his apparent authority, his receipt cannot be regarded as a receipt by the firm and the other partners will not be liable, unless the money received comes into their possession or under their control.



3.19 RIGHTS OF TRANSFEREE OF A PARTNER'S SHARE (SECTION 29)

A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner. The Supreme Court has held that the assignee will enjoy only the rights to receive the share of the profits of the assignor and account of profits agreed to by other partners.

The rights of such a transferee are as follows :

- (1) During the continuance of partnership, such transferee is not entitled (a) to interfere with the conduct of the business, (b) to require accounts, or (c) to inspect books of the firm. He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.
- (2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners: (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

By virtue of Section 31, which we will discuss hereinafter, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his stead, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

As a general rule, the partners are at liberty to determine their rights and obligation per se (as between themselves) by means of a contract between them. It follows that an agreement between partners which enables one either to introduce a new partner in the firm (over and above the existing partners) or to substitute another partner in his place by novation, transfer or otherwise, could bind all the partners. If a partner has an unconditional right to transfer his share so as to substitute another person in his stead, then he will not be liable for any acts of the firm subsequent to a valid transfer of his share and serving notice of it on his copartners. This would, in effect, tantamount to his retirement from the firm and hence his rights and liabilities would be governed by Section 32 of the Act.

3.20 LEGAL CONSEQUENCES OF PARTNER COMING IN AND GOING OUT (SECTIONS 31 TO 38)

Introduction of new partner (Section 31) : As we have studied earlier, subject to a contract between partners and to the provisions regarding minors in a firm, no new partners can be introduced into a firm without the consent of all the existing partners. The liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners.

The creditor's consent is necessary in every case to make the transaction operative. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership. But a mere agreement amongst partners cannot operate as Novation. Thus an agreement between the partners and the incoming partner that he shall be liable for existing debts will not *ipso facto* give creditors of the firm any right against him.

Retirement of a partner (Section 32) : A partner may retire : (i) with the consent of all the other partners; (ii) by virtue of an express agreement between the partners; or (iii) in the case of a partnership at will, by giving notice in writing to all other partners of his intention to retire.

Such a partner, however, continues to be liable to the third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by other partners. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner [Sub-Sections (3) and (4)].

Right of outgoing partners :

- (i) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he cannot use the name of the firm or represent himself as carrying on the business of the firm or solicit customers of the firm he has left [Section 36(1)]. Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36(2)]. A similar rule applies to such an agreement of sale of the firm's goodwill [Section 53(3)].
- (ii) (a) On the retirement of a partner, he has the right to receive his share of the property of the firm, including goodwill. It has been held that in the absence of evidence of any uniform usage to the contrary, the assets (property) should be taken at their fair value to the firm at the date of the account and not at their value as appearing in the partnership.
(b) An outgoing partner, where the continuing partners carry on business of the firm with the property of the firm without any final settlement of accounts with him, is entitled to claim from the firm such share of the profits made by the firm, since he ceased to a partner, as attributable to the use of his share of the property of the firm. In the alternative, he can claim interest at the rate of 6% per annum on the amount of his share in firm's property (Section 37).
(c) However, if by a contract between the partners, an option has been given to the surviving or continuing partners to purchase the interest of the outgoing partner and the option is duly exercised, the outgoing partner or his estate will not be entitled to any further share of the profits. If on the other hand, any partner who assumes to act in exercise of the option, does not in all material respects comply with the terms thereof, then he would be liable to account under the provisions contained in Para (b) above (Proviso to Section 37).



Liabilities of an outgoing partner : As we have already stated earlier, a retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner [Section 32 (3) and (4)].

The liability of a retired partner to third parties continues until a public notice of his retirement has been given. As regards the liability for acts of the firm done before his retirement, the retiring partner remains liable for the same, unless there is an agreement made by him with the third party concerned and the partners of the reconstituted firm. Such an agreement may be implied by a course of dealings between the third party and the reconstituted firm after he had knowledge of the retirement [Section 32 (2)].

Expulsion of a partner (Section 33) : A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that: (i) the power of expulsion must have existed in a contract between the partners; (ii) the power has been exercised by a majority of the partners; and (iii) it has been exercised in good faith. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33 (1) includes three things :

- (a) that the expulsion must be in the interest of the partnership.
- (b) that the partner to be expelled is served with a notice.
- (c) that he is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void. The only remedy, when a partner commits misconduct in the business of the firm, is to seek judicial dissolution.

You should also note that under the Act, the expulsion of partners does not necessarily result in dissolution of the firm. The invalid expulsion of a partner does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

Example : A, B and C are partners in a Partnership firm. They were carrying their business successfully for the past several years. Spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry over the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C. Considering the provisions of Indian Partnership Act, 1932 state whether they can expel a partner from the firm.

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that : (i) the power of expulsion must have existed in a contract between the partners; (ii) the power has been exercised by a majority of the partners; and (iii) it has been exercised in good faith. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33 (1), Indian Partnership Act, 1932 includes three things :

- (a) that the expulsion must be in the interest of the partnership.
- (b) that the partner to be expelled is served with a notice.
- (c) that he is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void. Therefore, expulsion of Partner B is not valid.

In this context, you should also remember that provisions of Sections 32 (2), (3) and (4) which we have just discussed, will be equally applicable to an expelled partner as if he was a retired partner.

Insolvency of a partner (Section 34) : When a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date of the order of adjudication whether or not the firm is thereby dissolved. His estate (which thereupon vests in the official assignee) ceases to be liable for any act of the firm done after the date of the order, and the firm also is not liable for any act of such a partner after such date (whether or not under a contract between the partners the firm is dissolved by such adjudication).

You must also note that ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Death of a partner (Section 35) : Where under a contract a firm is not dissolved by the death of a partner, the estate of the deceased partner is not liable for acts of the firm after his death.

Ordinarily, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In relation to Section 35, let us consider a concrete case. X was a partner in a firm. The firm ordered goods in X's lifetime; but the delivery of the goods was made after X's death. In such a case, X's estate would not be liable for the debt; a creditor can have only a personal decree against the surviving partners and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This because there was no debt due in respect of the goods in X's lifetime.

Revocation of continuing guarantee by change in the firm (Section 38) : Section 38 of the Indian Partnership Act provides that a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. You should note that the above rule is subject to an agreement to the contrary. The agreement, if any, to the contrary required to displace the effect of Section 38, must be clear.



3.21 SUMMARY

The mutual rights and duties of partners are regulated by the contract between them. Such contract need not always be express, it may be implied from the course of dealing between the partners. (Section 11). Section 12 gives rules regulating the conduct of the business by the partners and Section 13 lay down rules of mutual rights and liabilities. Sections 14 to 17 also contain particular rules which become useful and important while determining the relations of partners to one another. What is essential to note, however, is that all these rules are subject to contract between the parties.

As regards third parties, a partner is the agent of the firm for all purposes within the scope of the partnership concern. His rights, powers, duties and obligations are in many respects governed by the same rules and principles which apply to the agent. Generally, he may pledge or sell the partnership property; he may buy goods on account of the firm; he may borrow money, contract debt and pay debts on account of the firm; he may draw, make, sign, endorse, accept, transfer, negotiate and get discounted promissory notes, bills of exchange, cheques and other negotiable papers in the name and account of the firm. The implied authority of the partner to bind the firm is restricted to acts usually done in the business of the kind carried on by the firm. He is also empowered under the Act to do certain acts in an emergency so as to bind the firm. The firm, however, is bound only by those acts of a partner which were done by him in his capacity as a partner.

A partner may in some circumstances become liable on equitable grounds for obligations incurred by a copartner in doing acts in excess of his authority, real or implied. He may also become liable for an unauthorised acts of his copartner on the ground of estoppel.

CHAPTER – 3

THE INDIAN PARTNERSHIP ACT, 1932



Unit 3

Registration and Dissolution of a Firm



Learning Objectives

- ◆ Be aware of mode of getting a firm registered with the authorities.
- ◆ Understand the effect of registration of a firm upon the rights of partners inter se and the rights of the third parties.
- ◆ Note the effect of non-registration on rights of partners and the third parties.
- ◆ Learn the various circumstances when a firm is dissolved and the consequences and the effect of the dissolution upon rights and liabilities of various parties.

3.22 MODE OF EFFECTING REGISTRATION

The registration of a firm may be effected at any time by sending by post or delivering to the Registrar, of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form. It is not essential that the firm should be registered from the very beginning. When the partners decide to get the firm registered, as per the provisions of Section 58 of the Partnership Act, they have to file the statement in the prescribed form. The statement must be accompanied by the prescribed fee stating (i) the firm's name, (ii) the principal place of business, (iii) the names of its other places of business, (iv) the date of joining of each partner, (v) the names in full and the permanent addresses of the partners, and (vi) the duration of the firm. The aforesaid statement is to be signed by all the partners or by their agents specially authorised in this behalf. Each partner so signing it shall also verify it in the manner prescribed.

When the Registrar is satisfied that the above mentioned provisions have been complied with, he shall record an entry of this statement in the register (called the Register of Firms) and shall file the statement.

Subsequent alterations as alterations in the name, place, constitution, etc., of the firm that may occur during its continuance should also be registered.

When the Registration is complete?

When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration. However, registration is deemed to be complete as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particular of the partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

3.23 CONSEQUENCES OF NON-REGISTRATION

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set off, if the suit be valued for more than Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realisation of his share in the firm's property where the firm is dissolved.

Non-registration of a firm does not affect the right of third parties against the firm or its partners, or the power of an Official Assignee, Receiver of Court under the Presidency-Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920 to realise the property of an insolvent partner.

Let us now examine the following cases :

A & Co. is registered as a partnership firm in 1970 with A, B and C as partners. In 1971, A dies. In 1972, B and C sue X in the name and on behalf of A & Co., without fresh registration. Now the first question for our consideration is whether the suit is maintainable.

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar. The test applied in the case was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely, (i) the suit must be instituted by or on behalf of the firm which had been registered; (ii) the person suing had been shown as a partner in the register of firms. In view of this position of law, the suit by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in the above illustration, what difference would it make, if in 1972 B and C had taken a new partner, D, and then filed a suit against X without fresh registration?

Where a new partner is introduced, the fact is to be notified, under Section 63 (1) of the Act to the Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

3.24 DISSOLUTION OF FIRM (SECTIONS 39-47)

The 'Dissolution' of firm means the discontinuation of the jural relation existing between all the partners of the firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the



relationship between such a partner and others is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a firm may take place (Sections 39-44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the firm becoming unlawful (i.e., compulsory dissolution);
- (d) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) efflux of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner. In case of death, it is to be noted that a contrary agreement may be made by the partners only if their number exceeds two. If there are only two partners the only result of either's death will necessarily be the dissolution of the firm.
- (e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- (f) by intervention of court in case of (i) a partner becoming of unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) misconduct of a partner affecting the business; (iv) wilful or persistent breaches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the Court being satisfied on other equitable grounds that the firm should be dissolved.

3.25 CONSEQUENCES OF DISSOLUTION (SECTIONS 45-52)

- (a) *Continuing liability until public notice* : In spite of dissolution of the firm, partners continue to be liable for any act done by any of them, which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution. For example, X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, Y also would be liable for the amount. To this rule, there are some exceptions. Even where notice of dissolution has not been given, there will be no liability for subsequent acts of other partners in the case of : (a) the estate of a deceased partner : (b) an insolvent partner, or (c) a dormant partner, i.e., a partner, who was not known as a partner to the person dealing with the firm.
- (b) *Rights to enforce winding up* : On a partnership being dissolved, any partner or his representative shall have right, against the others (i) to have property of the firm applied

in payment of the debts of the firm, and (ii) to have the surplus distributed amongst the partners or their representatives according to their respective rights.

- (c) *Extent of continuing authority of the partners after dissolution* : The authority of a partner to bind the firm and other mutual rights and obligations continue: (i) so far as may be necessary to wind up the firm, (ii) to complete the unfinished transactions pending at the date of dissolution and no other.
- (d) *Settlement of partnership accounts*: (a) In settling the accounts of a firm after dissolution, the following rules, laid down by Section 48 of the Indian Partnership Act, subject to an agreement by the partners, must be observed.
- (i) Losses including deficiencies of capital are to be paid first out of profits then out of capital and lastly by the partners individually in the proportions in which they were entitled to share profits. For example, X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed Rs. 6,600 to the capital of the firm and Y only Rs. 400. The assets amounted to Rs. 2,000. The deficiency (Rs. 6,600 + Rs. 400 – Rs. 2,000 i.e. Rs. 5,000) would have to be shared equally by Y and X's estate. If in this case, the agreement was that on dissolution the surplus assets would be divided between the partners according to their respective interests in the capital and on the dissolution of the firm a deficiency of capital was found, then the assets would be divided between the partners in proportion to their capital with the result that X's estate would be the main loser. It may be noted that *prima facie*, accounts between the partners shall be settled in the manner prescribed by partnership agreement. The above-mentioned rules apply subject to any agreement between partners. The rules laid down in Section 48, just specified, outline as to what will be the mode of settlement of accounts in the usual course of business. But if the partners, by their agreement, express any different intention as to the mode in which losses will have to be borne eventually or the manner in which capital or advances will have to be paid to any partner, such an intention must be given effect to. However, any such agreement cannot affect the rights of the creditors of the firm.
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order :
- in paying the debts of the third parties;
 - in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
 - in paying to each partner rateably what is due to him on account of capital and;
 - in distributing the residue, if any, among partners in the proportions in which they were entitled to share profits.

The significance of the foregoing provisions is that if the assets of the firm are not sufficient to pay off the liabilities of the firm including the amount due to each partner on account of capital, each partner would individually be liable to contribute towards the losses, including deficiencies of capital, in the proportion in which he is entitled to share profits.



Suppose A, B and C were partners under the agreement that they were to share equally in the profits and losses of the firm. In a suit between them for dissolution and accounts, it is ascertained that contributions of A, B, and C to the capital of the firm, were Rs. 10,000, Rs. 5,000 and Rs. 1,000 respectively. The assets of the firm after paying debts of the firm and advances made by the partners, as distinguished from their contributions to the capital of the firm, are Rs. 7,000.

The deficiency of capital (which must be regarded as loss) being Rs. 9,000, each partner must contribute to the assets an equal share of the deficiency, i.e. Rs. 3,000. After this is done, the assets then available, Rs. 7,000 + Rs. 9,000 or Rs. 16,000 will be distributed among the partners with the result that each will have suffered a loss of Rs. 3,000. In actual practice, it will not be necessary for A and B to pay Rs. 3,000 each but the matter will be settled on the basis of notional contributions so that C whose capital is Rs. 1,000 only will pay Rs. 2,000 out of Rs. 9,000 with the firm. A will take Rs. 7,000 and B Rs. 2,000. Assuming that A and B contribute to the capital deficiency Rs. 3,000 each and C cannot, A and B will share Rs. 13,000, i.e., Rs. 7,000 plus Rs. 6,000 in the proportion of Rs. 10,000 : 5,000. A will suffer a loss of Rs. 4,333 in all and B Rs. 3,667.

Where there are joint debts due from the firm and also separate debts due from any partner: (i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him; (ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm (Section 49).

In terms of Section 51, the partner paying a premium on entering into partnership for a fixed period becomes entitled to the return of an appropriate portion of the premium. We shall discuss the provisions of Section 51 later in detail.

- (e) *Personal profits earned after dissolution (Section 50)* : Where a firm is dissolved by the death of a partner and the surviving partners or the surviving partners along with the representatives of the deceased partner carry on business of the firm, any personal profits by them, before the firm is fully wound up, must be accounted for by them to other partners. Thus a lease expiring on the death of a partner, which is renewed by the surviving partners, before final winding up, belongs to the partnership.

This section has to be read with Section 53 which provides that in the absence of an agreement to the contrary, each partner or his representative is entitled to restrain (by injunction) other partners from carrying on a similar business in the name of the firm or from using the property of the firm for their own benefit till the affairs of the firm are completely wound up.

- (i) *Return of premium of partnership's premature dissolution* : According to Section 51, in the case of dissolution of partnership earlier than the period fixed for it, the partner paying the premium is entitled to the return of the premium of such part thereof as may be reasonable, regard being had to the terms of agreement and to the length of time during which he was a partner, except when the partnership is dissolved:

- (i) by the death of one of the partners;

- (ii) mainly due to the misconduct of the partner paying the premium;
- (iii) pursuant to an agreement containing no provisions for the return of the premium or any part thereof.

For example, X and Y become partners for 10 years; X pays Y a premium of Rs. 2,000. At the end of 8 years a quarrel arises between X and Y and a dissolution is declared. In such a case, X will be entitled to a return of such amount of the premium from Y as may be deemed reasonable. What is reasonable will depend upon the circumstances of each case.

The partner paying the premium gets a proportionate part of the premium where the partnership is dissolved:

- (i) Without the fault of either party; or (ii) owing to the fault of both; or (iii) on account of the fault of the partner receiving the premium; or (iv) due to the insolvency of the partner receiving the premium, where the partner paying the premium was unaware of the other's embarrassing circumstances at the time of entering into the partnership.
- (ii) *Rescission of partnership for fraud act. (Section 52)* : A partnership agreement is a contract based on mutual confidence. In the case of fraud or misrepresentation practised by one partner on the other, the party misled has the right to rescind the partnership agreement and is entitled to; (i) a lien on the surplus, after payment of firm's debts, for any sum paid by him for purchase of a share in the firm or for any capital contributed by him; (ii) to rank as a credit of the firm in respect of any payment made by him towards firm's debts; and (iii) to an indemnity from the partners guilty of fraud or misrepresentation against all the debts and liabilities of the firm.

Goodwill on dissolution (Section 55) : What the purchaser of goodwill acquires is (i) the right to carry on the same business under the old name and (ii) to represent himself to the customers of the old firm as the successor in the business of the old firm. The partners selling the goodwill of a firm can : (i) carry on a similar business; (ii) also compete with the business sold by them to purchaser and (iii) advertise their business in such manner as they deem fit, but, subject to an agreement to the contrary, they cannot use the firm name, represent themselves as carrying on the old business, and solicit the customers of the old firm.

3.26 MODE OF GIVING PUBLIC NOTICE (SECTION 72)

In every case where the public notice of any matter in respect of partnership firm is required to be given under this Act, it must be given by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business.

In the case of registered firms, apart from the aforesaid notification, a notice is also required to be served on the Registrar of Firms under Section 63 where the matters relate to (a) the retirement or expulsion of a partner, or (b) dissolution of the firm, or (c) the election, on attaining majority, to be or not to be a partner, by a person who as a minor, was admitted to the benefits of partnership.



3.27 SUMMARY

Registration of a firm is effected by the Registrar of Firms by recording in the Register of Firms an entry of the statement relating to registration furnished to him. The Act does not make registration of the firm compulsory, yet the effect of the rules relating to the consequences of non-registration is such as practically necessitates the registration of the firm at one time or other. Certain disabilities have been imposed on partners of an unregistered firm seeking to enforce certain claims in the Civil Courts. A firm which is not registered is not able to enforce its claim against third parties in the Civil Courts; and any partner who is not registered is not able to enforce his claim either against third parties or against the fellow partners. An unregistered partner may, however, sue for the dissolution of the firm or for accounts only if the firm is already dissolved.

Dissolution of a firm means the breaking up or extinction of the relationship which subsisted between all the partners of the firm under various circumstances contemplated by the Act. A partnership can be dissolved only in accordance with the manner prescribed under the Act.

3.28 MULTIPLE CHOICE QUESTIONS

1. The most important element in partnership is:
(a) Business (b) Sharing of Profits
(c) Agreement (d) Business to be carried on by all or any of them acting for all.
2. The maximum number of partners is specified in
(a) The Partnership Act (b) The General Clauses Act
(c) The Companies Act (d) The Societies Registration Act
3. A firm is the name of:
(a) The Partners (b) The minors in the firm.
(c) The business under which the firm carries on business
(d) The collective name under which it carries on business.
4. In the absence of agreement to the contrary all partners are:
(a) Not entitled to share profits (b) Entitled to share in capital ratio.
(c) Entitled to share in proportion to their ages.
(d) Entitled to share profits equally.
5. A minor is:
(a) A partner of a firm (b) Representative of the firm
(c) Entitled to carry on the business of the firm
(d) Entitled to the benefits of the firm
6. A partnership at will is one:
(a) Which does not have any deed
(b) Which does not have any partner
(c) Which does not provide for how long the business will continue
(d) Which cannot be dissolved.
7. Active partner is one who:
(a) Takes part in the business of the firm
(b) Actively participates in co-curricular activities
(c) Actively shares the profits (d) Makes a show of authority

8. Every partner has the right to:
- (a) Take part in the business of the firm
 - (b) To share exclusive profits
 - (c) To use the property of the firm for personal purposes
 - (d) Pay taxes
9. Each of the Partner is _____
- (a) Principal as well agent
 - (b) Only Agents of the firm
 - (c) Only Representatives of the firm
 - (d) Only Co-partners of the firm
10. A partner can retire on _____
- (a) Reaching the age of superannuation
 - (b) On the balance in the capital account reaching a certain amount
 - (c) In accordance with the Partnership Deed
 - (d) On the condition of his nominee becoming a partner
11. A partner can be expelled if _____
- (a) Such expulsion is in good faith
 - (b) The majority of the partner agree on such expulsion
 - (c) The expelled partner is given an opportunity to start a business competing with that of the firm
 - (d) Compensation is paid
12. Death of partner has the effect of _____
- (a) Dissolving the firm
 - (b) Result in continuance of the business of the firm
 - (c) His heirs joining the firm
 - (d) Computation of profits upto the date of death
13. Registration of a firm is _____
- (a) Compulsory
 - (b) Optional
 - (c) Occasional
 - (d) None of the above
14. An unregistered firm cannot claim _____
- (a) Set on
 - (b) Set off
 - (c) Set on and set off
 - (d) None of the above
15. On dissolution the partners remain liable until _____
- (a) Accounts are settled
 - (b) Partners dues are paid off
 - (c) Public notice is given
 - (d) The registrar strikes off the name
16. Which of the following statements, about the registration of firm, is not true:
- (a) It must be done at the time of its formation.
 - (b) It may be done at the time of formation.
 - (c) It may be done before filing a suit against third party.
 - (d) It may be done at any time after its formation.
17. As per the accepted view, the registration of the firm is considered complete when.
- (a) Complete application for registration is filed with the Registrar.
 - (b) Registrar files the statement and makes entries in the Register of Firms.
 - (c) Registrar gives notice of registration to all partners.
 - (d) Court records the statement and certifies the entries in Register of Firms.
18. Which of the following is not a disability of an unregistered firm?
- (a) It cannot file a suit against third parties
 - (b) Its partners cannot file a suit against the firm.
 - (c) It cannot claim a set-off exceeding Rs. 100.
 - (d) It cannot be sued by a third party.



19. Which of the following is not the right of a partner i.e., which he cannot claim as a matter of right?
- (a) Right to take part in business. (b) Right to have access to account books.
(c) Right to share profits. (d) Right to receive remuneration.
20. Which of the following acts are not included in the implied authority of a partner?
- (a) To buy or sell goods on accounts of partners.
(b) To borrow money for the purposes of firm.
(c) To enter into partnership on behalf of firm.
(d) To engage a lawyer to defend actions against firm.
21. After retirement from firm, which of the following partners is not liable by holding out, even if the public notice of retirement is not given?
- (a) Active partner (b) Sleeping partner
(c) Representative of deceased partner (d) Both (b) and (c)
22. Which of the following statements is not true about minor's position as a partner?
- (a) He cannot become a full-fledged partner in a new firm
(b) He can become a full-fledged partner in an existing firm
(c) He can be admitted only to the benefits of any existing firm.
(d) He can become partner on becoming a major.
23. The reconstitution of the firm takes place in case
- (a) Admission of a partner (b) Retirement of a partner
(c) Expulsion or death of a partner (d) All of the above.
24. A new partner can be admitted in the firm with the consent of
- (a) All the partners (b) Simple majority of partners
(c) Special majority of partners (d) New partner only.
25. A partner may retire from an existing firm
- (a) with consent of all partners (b) as per express agreement
(c) by written notice in partnership at will
(d) all of the above.
26. A partner may be expelled from the firm on the fulfillment of the condition that the expulsion power is exercised.
- (a) As given by express contract (b) By majority of partners
(c) In absolute good faith (d) All of the above.
27. A partnership firm is compulsorily dissolved where
- (a) All partners have become insolvent (b) Firm's business has become unlawful
(c) The fixed term has expired (d) In cases (a) and (b) only.
28. On which of the following grounds, a partner may apply to the court for dissolution of the firm?
- (a) Insanity of a partner (b) Misconduct of a partner
(c) Perpetual losses in business (d) All of the above.
29. Suppose you have entered into a partnership agreement with me and the partnership-deed provides neither for the duration nor for the determination of our partnership. What is the technical expression for this kind of partnership?
- (a) Partnership for a fixed term. (b) Partnership at will
(c) Particular Partnership. (d) Any of these.

30. A partnership at will is one
1. Duration not fixed
 2. Duration fixed
 3. Dissolved at any time
 4. Can be dissolved only on the happening of an event
- (a) 1 & 2 (b) 2 & 3 (c) 3 & 4 (d) 1 & 3
31. The position of a minor in a partnership firm is to be determined taking into account
1. The Indian Contract Act, 1872
 2. The Indian Partnership Act, 1932
 3. Minor's agreement
 4. The Majority Act, 1875
- (a) 1 & 2 (b) 2 & 3 (c) 3 & 4 (d) 1 & 4
32. Which of the following statement is not true about minor's position as a partner?
1. He cannot become a full fledged partner in a new firm
 2. He can become a full fledged partner in an existing firm
 3. He has to bear all liabilities like other partners
 4. He can become a partner on becoming a major
- (a) 1 & 2 (b) 2 & 3 (c) 3 & 4 (d) 1 & 4
33. Which of the following is not an essential feature of partnership?
1. Agreement
 2. Registration
 3. Test of Mutual Agency
 4. Separate Legal Entity
- (a) 1 & 2 (b) 2 & 3 (c) 2 & 4 (d) 1 & 4
34. X agrees with Y to carry passengers by taxi from Delhi to Gurgaon on the following terms, namely, Y is to pay X Rs. 100 per mile per annum, and X and Y are to share the costs of repairing and replacement of the cars, and to divide equally between them the proceeds of fares received from passengers. Choose the correct alternative.
- (a) X and Y are partners
 - (b) X and Y are cab owners
 - (c) X and Y are co-owners
 - (d) None of the above
35. X and Y purchase 10,000 bags of cement, which they agree to sell for their joint account. The relation between X and Y is
- (a) X and Y are partners
 - (b) X and Y are only joint owners
 - (c) X and Y are co-ventures
 - (d) None of the above
36. X agrees with Y who is goldsmith to buy and furnish gold to Y, to be worked up on by him and sold, and that they shall share in the resulting profit or loss. The contract between X and Y is that of
- (a) Partnership
 - (b) Association of goldsmith
 - (c) Contract for labour work
 - (d) Contract of Sale



37. X and Y agree to work together as carpenters but X shall receive all profit and shall pay wages to Y. The relation between X and Y is that
(a) Partners
(b) Carpenters
(c) Labourers
(d) Master-Servant
38. Match the following:
(i) *Firm is bound by all acts of a partner done within the scope* (a) Partnership at Will
(ii) *No duration for partnership* (b) Particular Partnership
(iii) *Duration for a period* (c) Sub-Partner
(iv) *Share of profits by an outsider* (d) Implied Authority
39. Match the following:
(i) *Partnership* (a) Arises by operation of law
(ii) *Co-ownership* (b) Comes into existence only after registration.
(iii) *Hindu Undivided Family* (c) Can arise by agreement or otherwise
(iv) *Company* (d) Arise by way of an agreement only
40. Match the following:
(i) *Partnership business carried on by all or by any one of them acting for all* (a) Evidence of Partnership
(ii) *Sharing of Profits* (b) Not necessary
(iii) *Registration of Firm* (c) Does not arise from operation of law
(iv) *Contract of Partnership* (d) Test of Partnership.
41. Match the following:
(i) *Full Fledged Partner* (a) Does not disclose his name
(ii) *Sleeping Partner* (b) Known to outside world
(iii) *Partner by holding out* (c) Minor
(iv) *Partner to benefits of partnership* (d) Active Partner

3.29 ANSWERS TO MULTIPLE CHOICE QUESTIONS

1. (d)	2. (c)	3. (d)	4. (d)	5. (d)
6. (c)	7. (a)	8. (a)	9. (a)	10. (c)
11. (a)	12. (a)	13. (b)	14. (b)	15. (c)
16. (a)	17. (b)	18. (d)	19. (d)	20. (c)
21. (d)	22. (b)	23. (d)	24. (a)	25. (d)
26. (d)	27. (d)	28. (d)	29. (b)	30. (d)
31. (a)	32. (b)	33. (c)	34. (a)	35. (a)
36. (a)	37. (d)			
38. (i) (d) (ii) (a) (iii) (b) (iv) (c)				
39. (i) (d) (ii) (c) (iii) (a) (iv) (b)				
40. (i) (d) (ii) (a) (iii) (b) (iv) (c)				
41. (i) (d) (ii) (a) (iii) (b) (iv) (c)				